

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
PAYNE, et al., : Docket #20cv8924
: 1:20-cv-08924-CM

Plaintiffs, :
- against - :
DE BLASIO, et al., : New York, New York
: June 24, 2021

Defendants. :
----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE
THE HONORABLE GABRIEL W. GORENSTEIN,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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None

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None

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2 THE CLERK: Payne v. De Blasio, et al., 20cv8924.
3 Counsel, please state your names and appearances for the
4 record starting with plaintiffs.

5 MS. MOLLY BICKLEN: This is Molly Bicklen of the
6 New York Civil Liberties Union Foundation and co-counsel
7 for the Payne plaintiffs.

8 MR. GIDEON OLIVER: Gideon Oliver co-counsel for
9 the Sow plaintiffs.

10 MR. ROB RICKNER: Rob Rickner, co-counsel for the
11 Sierra plaintiffs, good afternoon.

12 MS. ALISON FRICK: Good afternoon, this is Alison
13 Frick from Kaufman Lieb Lebowitz & Frick for the Wood
14 plaintiffs.

15 MR. ANDREW STOLL: And good afternoon, this is
16 Andrew Stoll for plaintiff Cameron Yates.

17 MS. LILLIAN MARQUEZ: Good afternoon, this is
18 Lillian Marquez of the AG's office on behalf of for
19 plaintiffs for People v. City of New York.

20 THE COURT: Who's here for defendants?

21 MS. DARA WEISS: Good afternoon, this is Dara
22 Weiss for the York City Law Department for defendants.

23 MS. BRACHAH GOYKADOSH: Brachah Goykadosh also on
24 behalf of defendants. Good afternoon, Your Honor.

25 MR. ANTHONY DiSENZO: Anthony DiSenso also on

1
2 behalf of the defendants.

3 MS. RACHEL KAUFMAN: Rachel Kaufman also on
4 behalf of defendants.

5 THE COURT: Okay, who's going to be speaking for
6 the plaintiffs today?

7 MS. MOLLY BICKLEN: Your Honor, this is Molly
8 Bicklen from the New York Civil Liberties Union Foundation.
9 I'll be speaking on behalf of the plaintiffs to address
10 defendants' failure to produce documents in these
11 consolidated cases.

12 MR. OLIVER: And, Your Honor, Gideon Oliver, co-
13 counsel, and so I'm prepared to speak about the
14 interrogatories piece.

15 THE COURT: I think we have - first, let me
16 start by saying we're being recorded, but any dissemination
17 of this proceeding or copying of any kind is strictly
18 prohibited. A transcript will presumably be ordered by the
19 parties. And I should remind attorneys that if they're not
20 speaking, they should keep themselves on mute.

21 I think we have sort of three projects for this
22 conference. One is dealing with substantive objections to
23 the responses to the document requests and the
24 interrogatories. And when I say substantive, I guess I
25 would also include complaints about the manner in which

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2 those document requests or interrogatory responses will
3 give information about timing, and if there's complaints
4 about that, what we do about that. The second thing is the
5 plaintiffs' complaints about the information that's been
6 provided by the City about their process which is reflected
7 in the June 21 letter. And then I think the third thing is
8 the requests for what we do going forward in terms of
9 specific orders regarding timing of production.

10

If after we accomplish that, if someone thinks
there's something else we need to do, certainly we'll go
around at the end and make sure I didn't fail to cover what
we need to accomplish.

14

Also, I had spoken to Judge McMahon, I just
wanted to advise you of information that she had given to
me regarding the discovery process which I'll distill and
summarize. In essence, she reiterates that she does not
believe this litigation should be prolonged. She intends
to try the case next year. She wants me to advise her
whether any party is being recalcitrant about discovery.
She's fully prepared to enter sanctions orders of
preclusion against any party who's being recalcitrant about
discovery. She expects all parties, especially the City,
to devote whatever resources are necessary to getting
discovery done in time to meet her schedule. And if it

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2 turns out that a particular party is being recalcitrant or
3 slow walking discovery, she wants it known that she will
4 entertain a preclusion motion. So I just wanted to make
5 sure I got that out there and it didn't get lost as we go
6 later into the conference.

7 Okay, on the issues that I talked about, I'm
8 prepared to go through the complaints about the responses
9 to the document requests and the interrogatories both to
10 the extent that they're substantive and relate to timing.
11 It's a little bit unusual for me because, you know, because
12 as I put this on a compressed schedule, I've gotten a
13 letter from the plaintiffs but I haven't gotten anything
14 from the defendants. I assume they're prepared to talk.
15 I'm prepared to try to do this orally. If something comes
16 up that absolutely has to be in a letter, then, you know, I
17 can wait a day or two for such a letter. I think would be
18 to the City's advantage to not have to write a letter and
19 to present it orally, but if for some reason that's a
20 problem, I guess I'm willing to hear about it.

21 So, Ms. Bicklen, should we go through your sort
22 of specific - if we start with the thing which is the, you
23 know, the complaints about the specific request
24 interrogatories or should we start with the letter and
25 whether you got sufficient information in that letter?

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2 MS. BICKLEN: Thank you, Your Honor. We think
3 that they're one of a piece. Most specifically, the
4 problem that plaintiffs have had with defendants' responses
5 is that they keep telling us that they are searching and
6 just to wait and they will provide us something. But it's
7 clear as their June 21 letter that that's illusory. In
8 many cases they merely claimed to have requested the
9 information, in other places it's very clear that they have
10 not even gathered or searched for this information.

11

And so putting together their second amended
responses, which, again, in many cases promises to be
looking for things. In other places it says that, you
know, issues are burdensome but does quantify that. It's
hard to separate out these issues. We're happy to go
through it one by one, but we think at the end of the day
the most significant problem is that they are not gathering
these documents quickly enough, reviewing them and sending
them out, and that is just going to be true in response to
every single request.

21

THE COURT: Okay, well, I mean this is your
chance to go through some of those issues in depth. I mean
I guess one - well, maybe we should do it on a broader
scale to start. So, Ms. Weiss, are you speaking for the
defendants?

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2 MS. WEISS: Yes, Your Honor.

3 THE COURT: I think that your June 21 letter
4 certainly advances the ball on transparency which was my
5 goal from the last conference by giving a good deal of
6 information I didn't have before. But I think on the thing
7 that's most important to the plaintiffs they're still
8 operating in the dark. And I would've thought that there
9 has to be some mechanism whereby you can say we have 5,000
10 documents, or whatever the number is, that have to be
11 reviewed. We have X number of people reviewing it. It's
12 going to take this much time, and we're going to do it on
13 this schedule. I'm not saying that you could do that
14 definitively with respect to all the documents, but you
15 might know that you have right now 5,000 documents or some
16 number, whatever the number is, and what is the problem
17 telling us what that number is and what it's going to take
18 timing-wise to go through the process that you describe in
19 this letter.

20 MS. WEISS: Well, Your Honor, I can answer that
21 to some extent, but with your permission I may need - we
22 have two of our e-discovery counsel on the line, Ms.
23 Kaufman and Mr. DiSenso, and I may need them to chime in
24 with some details if that would be okay. I do know that as
25 of right now we probably have about 40,000 documents in our

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2 possession that we received from our client. Is that
3 right, my e-discovery colleagues?

4 MR. DiSENZO: This is Anthony DiSenso. I don't
5 have the number in front of me, but that sounds roughly
6 right. I think it's maybe in the neighborhood of 50,000 if
7 I recall off the top of my head.

8 MS. WEISS: We can confirm that we have that
9 now. And we're trying to - we don't have a definitive
10 answer right now on how many people and how the review is
11 going to do because it is such a huge amount, and we are
12 working on trying to figure out the most efficient way to
13 get those documents reviewed.

14 THE COURT: Okay, I mean you made a commitment
15 at the last conference and I think before that to have it
16 all done by July 31. So I'm going to hold you to that
17 commitment, and I guess the question is what is the
18 impediment to producing them on a rolling basis essentially
19 in equal, you know, in one, 10,000 a week if that's what it
20 comes down to, between now and July 31 sort of on an equal
21 weekly basis.

22 MS. WEISS: There's certainly going to be more
23 than just these 50,000, that's just what we have in our
24 possession right now. And as I think we stated either
25 during the conference last week or it could've been in

1 conversations, in meet and confers, I'm sorry, I don't
2 remember off the top of my head exactly when it was, this
3 coming Wednesday we're going to produce the first large
4 batch of these documents which we committed to do and we
5 will do. Some of them require less of a level of review
6 than others. So some of them will be able to go out fairly
7 quickly; some of them need a more thorough and intense
8 review because of the nature of the documents. And we're
9 sliding around personnel and reorganizing who's going to be
10 doing what on these cases and that takes things from other
11 cases that our division has, but we're ramping up how we're
12 going to get these reviews done.

14 THE COURT: How many documents will you produce
15 on the 30th, you must know that?

16 MS. WEISS: I don't have the number in front of
17 me. Anthony or Rachel, do you have that number from what
18 we had spoken about earlier?

19 (pause in proceeding)

20 MS. WEISS: I guess not --

21 MS. KAUFMAN: Hi --

22 (interposing)

23 MR. DISENKO: Sorry, Rachel, you're going to
24 speak?

25 MS. KAUFMAN: No, go ahead.

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2 MR. DiSENSO: Okay, as far as knowing the number
3 of documents we can produce, that's hard to say. We know
4 the (indiscernible) documents roughly, based on what we
5 have now from the number I stated before, the number of
6 documents that need to be reviewed in some fashion, you
7 know, it's possible some of those may be non-responsive or
8 privileged and wouldn't thus be actually produced.

9

THE COURT: So I'm not getting a number it

10 sounds like.

11

MS. KAUFMAN: For this Wednesday, this coming
12 Wednesday as I sit here right now, Your Honor, I'm sorry,
13 I don't have the number but it is significant. It's not a
14 hundred documents. It's a significant number of documents.

15

THE COURT: Thousands?

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MS. KAUFMAN: I believe so, yes.

17

MS. BICKLEN: Your Honor, this is Molly --

18

THE COURT: What is the process for - how much
19 personnel - let me back up. There may be vast differences
20 in what's needed to do different kinds of documents, and
21 one of the things that's going on is that the plaintiffs
22 need on the short term basis documents that relate to
23 policing practices more than they need documents relating
24 to particular arrests. Is that - and maybe I should ask
25 plaintiffs if, in fact, that's an appropriate distinction

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2 and one that should be pursued.

3 MS. BICKLEN: Your Honor, this is Molly Bicklen
4 for the Payne plaintiffs. Because they are not a class
5 case, I would defer to my colleague on the line for Sow,
6 Gideon, who may be able to address that as well. I think
7 we want both types of documents, but currently the class
8 certification is September 1.

9 THE COURT: I understand that, but it's the
10 expert deadline that I know that is of great concern right
11 now or least expert disclosure deadline. And I would have
12 thought that, and I understood from the last letters and
13 conference, that the documents relating to police practices
14 are in a sense a priority because that was the subject of a
15 July 1 deadline. Your class certification deadline's not
16 till September.

17 MS. BICKLEN: That's right, Your Honor, and
18 those should not be very difficult to review insofar as
19 there should be no privilege. They should be able to
20 identify those and send those out the door and should
21 already have been able to do so.

22 THE COURT: All right, let me just ask Ms.
23 Weiss, do you understand the distinction that I'm making
24 and what is this first batch going to be more arrests, you
25 know, individual arrest type documents or are they going to

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2 be what I'm calling police practice documents?

3 MS. WEISS: I do understand the distinction, and
4 it's my understanding that it's going to be a mix. A lot
5 of it is going to be individual arrest type documents which
6 it's my understanding those play into part of the expert
7 issues as well in that plaintiffs are concerned with
8 statistics on race and gender in the arrests. I don't know
9 what they're asking their experts to opine upon, of course,
10 but I think there's definitely overlap. But certain things
11 like training documents and procedural documents, Ms.
12 Bicklen is right, require not a very high level of review,
13 and they would be able to go out sooner rather than later.

14 It's just, you know, if I may, it becomes very
15 difficult because on the several meet and confers that the
16 parties have had plaintiffs are giving defendants mixed
17 messages on what they want and when they want it. You
18 know, it comes down to, of course, they want everything,
19 and they will - as I mentioned several times, plaintiffs
20 are going to get and defendants will produce thousands upon
21 thousands upon thousands of documents. There's very little
22 that they're asking for that we're not planning on
23 producing. But it would actually be great, and thank you,
24 Your Honor, for bringing it up, if plaintiffs were able to
25 tell us what their real priorities were and perhaps we

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2 could do our best to get those documents reviewed and out
3 first, you know, because as I said, we've been getting
4 mixed messages in our meet and confers about what they're
5 looking for right away, what they need right now. So so
6 this is actually very helpful to defendants.

7 THE COURT: So, Ms. Bicklen, again, I - you
8 know, it seemed what precipitated the original letter to me
9 from June 9 was the concern about the expert discovery
10 deadline and I think to a lesser extent the class
11 certification deadline since it's months later. Is there a
12 desire to have them put the police practice/policy
13 documents to the front burner or is that not a desire?

14 MS. BICKLEN: Your Honor, at this stage almost
15 everything needs to be on the front burner, and what
16 defendants refer to as mixed messages I think is attempt at
17 flexibility on the part of the plaintiffs to work with
18 defendants to get literally anything. We have gotten so
19 few documents. We're trying to provide them with
20 flexibility to produce anything.

21 And so in our letter last night, for example,
22 we've identified documents that we think should be quite
23 easy to produce, including everything that already has been
24 produced to the Department of Investigation and Corporation
25 Counsel, after action reports and underlying documents, all

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2 responsive training documents, and all --

3 THE COURT: Okay, before you go down this road,
4 the answer I think I'm getting is it's not - making these
5 distinctions is not what's driving the plaintiffs at this
6 point. It's just the getting of the documents. So I don't
7 think I'm going to dwell any longer on trying to figure out
8 if there's something that should be front loaded. I think
9 we should go just back to the issue of producing as much as
10 can be produced as soon as it could be produced.

11 So I'm the one who brought this up. I've now
12 gotten my answer, and I think we have to move on from the
13 concept of trying to distinguish between different
14 categories just being of greater need to the plaintiffs
15 than others.

16 But let's now talk about what you talked about,
17 Ms. Bicklen. We have to do it in the context of the
18 overall production. I guess your contention is that there
19 are certain things that should be much easier to produce
20 than others. I don't think the defendants are arguing with
21 that principle. So I don't know - we're now being told
22 that by the 30th you're going to get thousands of
23 documents, that there's going to be, there's at least
24 50,000 documents they're reviewing and that will be
25 produced or withheld on nonresponsive or privilege grounds

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2 by July 31. Tell me how we can best use our time today to
3 do whatever it is you want to accomplish.

4 MS. BICKLEN: Well, respectfully, Your Honor, I
5 don't think we (indiscernible) where they wait until July
6 31 to produce documents.

7 THE COURT: No, I didn't mean to imply that.
8 No, and I don't think they said that. So I think that's a
9 straw horse, sorry, straw man. They said they're going to
10 be producing thousands of documents next week. I'm
11 prepared to order weekly production because I think the
12 biweekly production doesn't make any sense because there's
13 only one, two, three, four, five and a half weeks till this
14 July 31 deadline. So to the extent you were seeking weekly
15 production, I think that is important because you really
16 have waited long enough to get any serious number of
17 documents, and, you know, for the first time June 30 is
18 when you're getting a significant number.

19 So I'm with with you on that. Tell me what else.

20 MS. BICKLEN: Thank you, Your Honor. Another
21 concern we have is made clear by the defendants' letter is
22 that it appears that the New York Police Department is
23 doing an initial review for many documents and then sending
24 them to the defendants, or defense counsel to then do
25 another review. And we have significant concerns that that

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2 is not going to be sufficient in terms of obtaining the
3 documents that are necessary and responsive to the
4 plaintiffs' request. NYPD legal is not signing these
5 objections, and so, for example, in their June 21 letter,
6 with respect to responses 22 and 23, for example, these are
7 the search out documents concerning the Corporation counsel
8 report and the DOI report. And defendants state that these
9 documents do exist, they're currently undergoing review by
10 the NYPD and are expected to be produced to this office,
11 the Corporation Counsel's office soon, at which point they
12 will again be reviewed.

13 Respectfully, we have grave concerns about the
14 idea that there is an initial review happening that's
15 outside of Corporation Counsel's purview, but, second, that
16 this two layer track of review is just not going to get the
17 job done in terms of the compressed schedule that has been
18 set by Judge McMahon.

19 THE COURT: And these are documents that were
20 provided to the Corporation Counsel and DOI, is that what
21 this is?

22 MS. BICKLEN: These are documents concerning,
23 for example, document request 22 is all documents including
24 communications concerning the December 30, 2020 Corporation
25 Counsel report, which includes both documents that they

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2 produced to the Corporation Counsel in preparing such a
3 report but also any other communications concerning that
4 report.

5 THE COURT: And same for DOI.

6 MS. BICKLEN: And that is one example - sorry,
7 that is the Corporation Counsel number 22, and then we
8 asked for the same with respect to the DOI report in 23.
9 But, again, their response in a letter of June 21 is the
10 first time that they have made clear that, in fact, NYPD is
11 doing the sort of first analysis and review, and if that is
12 what is holding up, and if that is what they're doing in
13 response to other of the requests, that is a significant
14 problem.

15 MS. WEISS: Your Honor, if I may, just to
16 clarify what is meant by the NYPD's review, respectfully,
17 they can't just hand us over a bunch of documents. They
18 have a responsibility and we have asked them to look
19 through these documents and make sure that this is, you
20 know, say, for example, they have a file folder drawer full
21 of documents, you know, they have - and understanding
22 likely all on computer but I'm speaking in more of an old-
23 fashioned sense I guess. They have a responsibility and
24 we've asked them to make sure that the documents that
25 they're giving us are, in fact, the documents that were

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2 handed over to these entities for their investigations.

3 And another part of the review is, and I want it
4 clear that they're not holding things back or deciding what
5 is responsive and what is relevant, but they're also
6 looking through them because, as I'm sure the Court and all
7 the parties are aware, there are a lot of very sensitive
8 documents within the NYPD, and we've asked them to sort of
9 flag these documents so we know when we are looking at them
10 as their attorneys and as attorneys for the City, things
11 that we might have to take a closer review, a closer look
12 at for privilege or for responsiveness or for relevance.

13 So I just want to make it clear that NYPD legal
14 or anyone within the NYPD is not making decisions on what
15 should or should not be produced. That's not what this
16 review is that's mentioned in our letter. It's a review to
17 make sure that they're getting us the proper documents.

18 THE COURT: I'm not as concerned about that
19 aspect as I am about the delay factor. So what, you know,
20 the word soon is not helpful which is the letter that, the
21 word that you use in the letter. So what date do you get
22 these documents or do you have no idea?

23 (pause in proceeding)

24 THE COURT: Ms. Weiss, did we lose you?

25 MS. WEISS: I'm sorry, I'm very sorry. I was

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2 saying, and I don't know how much you caught, when I wrote
3 this letter on Monday, I was not aware that we, in fact,
4 almost 50,000 documents in our possession, us being the New
5 York City Law Department. They are undergoing review. So
6 I believe that those documents are probably encompassed in
7 these 50,000 documents or at least a good portion of them.

8

THE COURT: You think you have them already?

9

MS. WEISS: I can't - I can't guarantee that we
10 have every single one, but it looks like we have a lot of
11 documents from the DOI investigation at the very least.

12

THE COURT: Is there someone who knows more than
13 you about what's going on? Because (indiscernible).

14

MS. WEISS: Perhaps our e-discovery counsel, Mr.
15 DiSenso or Ms. Kaufman, have a better idea exactly what
16 have with respect to those documents?

17

(pause in proceeding)

18

MR. DISENKO: Hi, this is Mr. DiSenso. You
19 know, again, these are the same documents we were talking
20 about before. We have them in our database, as Ms. Weiss
21 was saying at the beginning of the conference. At this
22 point, we're trying to determine the proper (indiscernible)
23 strategy for these documents, what can go out as quickly as
24 possible --

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THE COURT: That's not the part I'm asking

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2 about. That's not the part I'm asking about. I'm asking
3 about --

4 MR. DiSENZO: I apologize.

5 THE COURT: No problem. Are you familiar with
6 Ms. Weiss's letter of June 21?

7 MR. DiSENZO: Unfortunately, Your Honor, I can't
8 say I am.

9 THE COURT: Okay, so, Ms. Weiss, this is the
10 problem, I need someone who knows everything. And I think
11 you should be this person. You write these documents
12 expect to be produced to this office soon, and it seems
13 like it is your responsibility to know that, but I think
14 it's your responsibility to know the answer to that
15 question which is have they been produced now and are they
16 in this batch?

17 MS. WEISS: As I said, I believe with respect to
18 the documents that NYPD produced to Department of
19 Investigations, yeah, I believe that that is what is in the
20 set, you know, among other things of course.

21 THE COURT: Okay, so you think that - I mean I
22 would've thought that Ms. Bicklen said we're really
23 concerned about the fact that you haven't even gotten these
24 documents from NYPD, your answer would've been, oh, no, we
25 have them, don't worry. What wasn't that your answer and

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23

2 is that your answer?

3 MS. WEISS: Because I'm going to give the
4 answer, yes, we have those documents, don't worry, to the
5 extent I can without being able to, as I sit here right now
6 and, you know, as an officer of the court, I do not want to
7 give incorrect information, but as I sit here now, I cannot
8 access the database to see exactly what documents are in
9 there. This is what has been indicated to me, that this
10 was this part of this huge batch of documents that was sent
11 over to our office. But I also can't right now, as we sit
12 here this moment, 100 percent guarantee that, but it is my
13 strong belief.

14 THE COURT: Okay, well, I mean that's worth
15 something, but let me just tell you for the future, you
16 need to have, you know, when you put something in the
17 letter like this, you need to be able to answer questions
18 about it and track it, not just for me, but to know what's
19 going on with the efforts to do all of this, and that has
20 to reside in someone's know, and if you're the person who
21 it is, then you need to have all that knowledge, you need
22 to track each of these requests to see what's going on, how
23 many documents are involved, what stage they're at. There
24 should be a chart that's available to you that let's you
25 know what all these things are and what's being done about

1 them. All right? So for our next conference, do you
2
3 understand you have to be able to do?

4 MS. WEISS: Yes, Your Honor.

5 THE COURT: Okay, Ms. Bicklen, should we go
6 through more of these? Tell me what we should do.

7 MS. BICKLEN: Thank you, Your Honor. At this
8 point, it might be helpful to inquire as to how many
9 attorneys are working on this. We have known from some of
10 the meet and confers with respect to depositions that at
11 times it's only one attorney from Corporation Counsel who's
12 available. And if it is the case that only one attorney is
13 available to review these documents for privilege to
14 determine when they can be produced, I have grave concerns,
15 given what we just heard, about the ability to even meet
16 the promise to start major production.

17 THE COURT: So, Ms. Weiss, I think that's
18 something that I talked about last time in order to assess,
19 you know, whatever claims you've made to not having made
20 much production up until this point, what - and I'm not so
21 concerned about the tasks, but I'm concerned about a July
22 31 deadline, how many attorneys are going to be reviewing
23 these documents and at what pace and what is the plan on
24 that?

25 MS. WEISS: Well, that is part of what we're

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2 trying to determine now. We don't have the staffing at
3 this moment or the arrangement of staffing I should say to
4 be able to review tens upon tens of thousands of documents
5 by July 31. Part of what we're doing is working on
6 getting, you know, ramping up the staffing to get these
7 documents reviewed so that we can ensure that we will have
8 them reviewed and produced in time.

9 THE COURT: Well, this is the first time I've
10 ever heard you express doubt that you're going to meet the
11 July 31 deadline.

12 MS. WEISS: Oh, no, we fully intend on doing so,
13 Your Honor.

14 THE COURT: But you don't have, no one has given
15 you the staffing to do it.

16 MS. WEISS: It's being worked on as we speak.

17 THE COURT: Okay, well, what I have to tell you
18 is what I said earlier which is the communication from
19 Judge McMahon which is either we don't get answers to the
20 questions or it was insufficient, then the City is putting
21 itself at risk in terms of how this delayed, the delay is
22 going to be treated. So I'm not asking you to say anything
23 about it, but I just want to remind you again that the City
24 is at risk of preclusion or other sanctions if it hasn't
25 done the staffing necessary to meet the deadlines on the

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2 case. You understand that, Ms. Weiss?

3 MS. WEISS: Understood, Your Honor.

4 THE COURT: All right, well, I think we need to
5 get more reports. I hate to have, you know, you spend
6 whatever it takes to write these letters, I think it'll be
7 a little easier to write the second one because you can use
8 the template of the first. We're going to have to continue
9 the transparency as long as the plaintiffs aren't getting a
10 large number of documents which they just aren't. We have
11 to understand what's going on. So we're going to have to
12 go to weekly production. You told me the first production
13 is Wednesday, the 30th. In the earlier call you told me
14 for some reason Thursday was better for you. Has that gone
15 by the boards?

16 MS. WEISS: Well, the reason I was saying
17 Wednesday I think that was in part in response to what
18 plaintiffs are saying because we made a small production on
19 Wednesday the 16th I believe it was. Thursday is better
20 for the Law Department. We would certainly prefer to do
21 Thursdays if that's an option.

22 THE COURT: Well, let's start with the 30th which
23 is a Wednesday. That's going to be the first one. And
24 then for the next week you can go to Thursday, which would
25 be July 8.

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2 MS. WEISS: Thank you.

3 THE COURT: And I think we're going to have to
4 get updates from you on anything that changes with respect
5 to what you wrote in your June 21 letter. So, for example,
6 you say arrest report - I just picked one out for example -
7 the document request number 9 was going to even have
8 certain things produced next week. So in your next letter
9 you're going to say they were produced, presumably, and if
10 not, given an explanation for it. And I think you have to
11 do that for - I think we're going to have to have reports,
12 you know, you're going to have to update this letter, and
13 we're not going to, and I need you to add a section and the
14 section is how many people, how many documents are
15 available for you to review and how many people are working
16 on doing the privilege responsiveness review.

17 Okay, Ms. Bicklen, should we go through - is
18 there anything more specific we should be going through?
19 What do you propose?

20 MS. BICKLEN: I can continue, Your Honor. So,
21 for example, with respect to document request 7, seeks a
22 variety of documents related to the incident and the
23 protest at issue. Now, in their June 21 letter, they say
24 they will produce many of these but that the search for
25 U49, the unusual incident or occurrence reports will be

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2 unduly burdensome as it encompasses nearly any document
3 that NYPD employees created regarding the incident.

4 Quite simply, these protests are what are at
5 issue. The incidents at the protests are what are at
6 issue. And with just --

7 THE COURT: Before you go any further, before
8 you go any further, what's a UF49?

9 MS. BICKLEN: It's an unusual incident --

10 MS. WEISS: Your Honor --

11 (interposing)

12 MS. BICKLEN: -- occurrence report.

13 THE COURT: Okay.

14 MS. WEISS: Your Honor, this is Dara Weiss. If
15 I may add to this, the NYPD considers a UF49, from what I
16 understand with conversations with the NYPD, it's not only
17 the actual printed report but pretty much anything that any
18 NYPD employee writes down anywhere at all about the
19 incident. You know, and there were, at some of these
20 incidents, there were hundreds of police officers present,
21 you know, almost any little thing that they wrote down,
22 whether it be relevant or not, would be considered part of
23 a UF49.

24 The finalized report, you know, the official, the
25 to/from sort of memo report, that we're happy to produce.

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2 I guess it was just in the - we want it to be crystal clear
3 from the phrasing of plaintiffs' document request that, you
4 know, absolutely anything that any NYPD employee wrote
5 about anything regarded to any of these incidents would be
6 overbroad, overly burdensome, and likely irrelevant.

7 THE COURT: I'm totally lost still. Are you
8 talking about a logbook entry, Ms. Weiss, is that what you
9 say is burdensome or is there literally a formal form
10 called the UF49 and --

11 MS. WEISS: There is --

12 THE COURT: I'm completely confused.

13 MS. WEISS: There is - I'm not sure if there's a
14 formal form, but there is often like a to/from memo, you
15 know, often written to a higher-up from someone who was on
16 the scene saying, you know, this, that, or the other thing
17 happened. Those types of things are, you know, filed in a
18 certain way and easily found, and they often describe what
19 happened at these events, including, you know, arrests that
20 were made and a number of other things. Those --

21 THE COURT: Those you say you are producing.

22 MS. WEISS: Those we can produce absolutely.

23 But the NYPD --

24 THE COURT: But what is it you can't produce?

25 MS. WEISS: The NYPD also considers, you know,

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2 in the universe of UF49 absolutely, you know, anything that
3 any NYPD employee writes down anywhere about anything that
4 happened at these events, whether relevant to the claims in
5 these lawsuits or not. And it's just, to try to - and it's
6 not even the officers who were present; if someone
7 somewhere else happened to jot something down, it would be
8 incredibly burdensome to try to get these documents, and we
9 don't even know if we could, you know, if we could even
10 find everything that's out there.

11 But I think ultimately what would be the
12 important and relevant part would be these final UF49
13 unusual occurrence reports.

14 THE COURT: Which is what they asked for. I
15 don't understand why you would call a logbook entry a UF49,
16 if that's what you're talking about.

17 MS. WEISS: No, no, I don't think we did. It
18 wouldn't be a logbook.

19 THE COURT: Well, you just keep saying someone,
20 anybody writes down anywhere - this is getting a little bit
21 surreal. Either there's this form UF49 or there isn't, and
22 I don't know why you're defining it in this broad manner.

23 MS. WEISS: This is after conversations with the
24 NYPD, this is what they explained to me.

25 THE COURT: You need to get - we're not going to

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2 do this now. I think there's something not making sense
3 here. I'd like you to get as much information as you can
4 about what a UF49 is, find some examples of things that
5 you're talking about, just one, that you're not going to
6 produce, discuss this with plaintiffs' counsel, and I think
7 this is not the right time to work this out. So, Ms.
8 Bicklen, let's go on to something else.

9 MS. BICKLEN: Thank you, Your Honor. I'd like
10 to turn to document request 15, which seeks all documents
11 concerning incidents investigated or referred to
12 investigation to the Civilian Complaint Review Board. And
13 in their response and there letter of June 21, defendants
14 claim that they've requested this information from the CCRB
15 and are waiting a response. But we need specifics on when
16 that information will be provided and as quickly as
17 possible.

18 THE COURT: And just to educate me, so this is
19 for anybody, the CCRB is, you know, it's subject to the
20 Mayor, it's not in any way independent. Mayor has complete
21 control over getting their documents and so forth or not?

22 MS. BICKLEN: It is my understanding that
23 Corporation Counsel has agreed to represent them in this to
24 produce documents.

25 THE COURT: Are they a separate entity from -

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2 that doesn't answer my question. I'm not asking who the
3 lawyer is. I'm asking who has control over the documents.

4 (interposing)

5 MR. OLIVER: -- Gideon Oliver.

6 THE COURT: The CCRB is assume is not a
7 defendant in this case. So my question is --

8 MS. BICKLEN: That's right.

9 THE COURT: -- the City of New York is a
10 defendant. Is the CCRB completely within, the documents of
11 the CCRB completely in the control of the Mayor of the City
12 of New York? Ms. Weiss.

13 MS. WEISS: I actually do not know the answer to
14 that question, Your Honor. All I know is that in this case
15 or any other case when we are requested or required to
16 provide documents by the CCRB, we make a request like
17 anyone else would to the CCRB for documents. And they are
18 --

19 THE COURT: Like anyone else would, you mean
20 like a person off the street?

21 MS. WEISS: If a person off the street wanted to
22 subpoena documents from the CCRB, I'm sure that they could.
23 I don't know what they would get, but the CCRB --

24 THE COURT: No, Ms. Weiss, I'm trying to
25 understand what you're - Ms. Weiss, I'm trying to

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2 understand what you're saying. Are you saying that you
3 (indiscernible) same position as anybody else? Because
4 that's what I heard you to say.

5 MS. WEISS: From the way that in my career with
6 the New York City Law Department I have been requesting
7 documents from the CCRB, I don't know that they are - I
8 don't know their exact relation with the City and how they
9 are involved or controlled with the City. It was my
10 understanding that they were an independent entity of some
11 sort. I don't know all the background behind it. But the
12 New York City Law Department and the NYPD do not unfettered
13 access to their documents. We have to go through a formal
14 requesting process.

15 THE COURT: Okay, well, so, Ms. Bicklen, you
16 know, if this was a city agency, a normal city agency, I
17 would treat this in one way. It's something else
18 apparently, unless you persuade me otherwise, and tell me
19 what you think is the right, I mean I don't know if they
20 need to be subpoenaed, I don't know, maybe they need to be
21 in front of us? I guess is it correct, Ms. Weiss, you're
22 representing them right now?

23 MS. WEISS: I don't know that I'm representing
24 them. I don't know that I have any call to represent them.

25 THE COURT: Well, if they're (indiscernible)

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2 documents, I mean was a document request the appropriate
3 way to get these documents or did it require a subpoena?

4 MS. WEISS: It did not require a subpoena. We
5 made a request to the CCRB.

6 THE COURT: No, no, no, I'm talking about the --

7 MS. BICKLEN: Your Honor, the City --

8 THE COURT: I'm talking about the plaintiffs,
9 you can only make document requests of parties. So did
10 they properly proceed or not? I mean they can issue a
11 subpoena tomorrow. It's not terribly hard. Someone has to
12 be able to say to me here's what's going in the CCRB and
13 here's their timetable. Are you saying you're not that
14 person? Because I need that person.

15 MS. WEISS: I can - I personally am not that
16 person. I can make or have calls made to them tomorrow to
17 try to find out the, you know, progress that they're
18 making.

19 THE COURT: Well, I think that's important --

20 MS. WEISS: We have contact --

21 THE COURT: I mean if they're prepared to submit
22 to the Court's jurisdiction now, great. If they want a
23 subpoena, we'll do that tomorrow. But they need to, I
24 think, Ms. Bicklen, it makes sense for them to send you a
25 letter or whoever's representing them to send you a letter

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2 immediately saying what the status of the request is
3 because Ms. Weiss is taking the position that she can just
4 request from them and has to wait. Because they're an
5 independent agency.

6 MS. WEISS: Your Honor, I just want to clear I
7 don't know exactly what they are in relation to the City.
8 I don't know all the ins and outs of their relationship --

9 THE COURT: Okay, Ms. Weiss, this is back to
10 what I, related to what I said before, which is you need to
11 be on top of all of these requests. It needs to be one
12 person, and if it's you, that's great. But you need to
13 know what's going on at the CCRB, and if your answer is I
14 have no control, all I can do is find out what they're
15 doing, then we need to do something else. We need to have
16 a subpoena so that I can order them to do something. I
17 know I can order the City to do something, but it sounds
18 like you're telling me that you have no control over the
19 CCRB.

20 MS. BICKLEN: Your Honor, this is Molly Bicklen.
21 With respect, they're a City agency, and defendants have
22 not taken the position in their responses that they are not
23 in possession of the documents or not in custody of them
24 such that we would have to do a subpoena. They're part of
25 the City charter, and so it's just not clear to me why

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2 there has to be this process of waiting.

3 THE COURT: I don't want to wait, I agree with
4 you. I want a letter from, if, Ms. Weiss, you can't do it,
5 I want a letter from the CCRB by Monday that says exactly
6 when these documents are going to be produced. And I don't
7 mean produced to you; I mean produced. Whoever's producing
8 them. Okay, so that needs to be given to the plaintiffs by
9 Monday, Ms. Weiss, do you understand that?

10 MS. WEISS: Yes, Your Honor.

11 THE COURT: That's with respect to document
12 request 15. Ms. Bicklen, what's next?

13 MS. BICKLEN: I think I'll defer to my colleague
14 with respect to the interrogatory.

15 MR. OLIVER: Your Honor, hi, Gideon Oliver.
16 Sorry that it's so late and we're just getting to the
17 interrogatories. But the letter from the - so the City had
18 three, has done three rounds of interrogatories. They're
19 virtually the same. There's almost no substantive
20 responses being the main problem. The June 21 letter from
21 the City provides no algorithm information about the
22 process that's been deployed. These interrogatories are
23 signed by Ms. Weiss, not any of the individual defendants.
24 We don't know anything about who was asked, which documents
25 were reviewed, which documents are necessary to give

1 complete answers or anything else that we think the Court
2 directed defendants to provide already.

3 But what is included is on the last page of
4 defendants' letter, they go through each of the 14
5 interrogatories and make certain representations. And if
6 it would be okay with the Court, I'd like to just run
7 through those, at least a few of those quickly to tell you,
8 you know, put them in some different buckets.

9 You know, they say with respect to
10 interrogatories 1 through 9 that the information is either
11 contained in documents that they've produced or that they
12 will produce. The documents they produced they say answer
13 fully interrogatories 1 to 6 are two types of documents:
14 detailed rosters and these, what they're calling MAPSI or
15 mass arrest processing center spreadsheets. These are what
16 we typically call mass arrest reports. They say these
17 documents will contain this information, and they're
18 contained in productions that we don't have yet. They also
19 say they're trying to get those two types of documents as
20 quickly as possible so they can be produced in the first
21 batch.

22 But yesterday we had a meet and confer about ESI,
23 and I asked them very specifically about these mass arrest
24 reports which from prior discovery we know lived in a

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2 shared hard drive in the criminal justice bureau.

3 Lieutenant Czark, C-Z-A-R-K, ha testified about this a
4 number of times, and he's the person that they've put up as
5 their ESI custodian. And so I don't understand why we're
6 waiting for versions of these documents that are in these
7 other productions when nothing has been done to, apparently
8 to go and get them and give them to us.

9 To the extent they say that their responses to,
10 you know, these interrogatories, we're asking the Court to
11 order defendants to produce all the records they say
12 contain the answers by the 28th. But I'll tell you that
13 the representation that the detail rosters and the mass
14 arrest reports will contain the information responsive to
15 interrogatories 1 to 6 is at best incorrect information,
16 but it is not accurate or true to say that those records
17 contain responsive information.

18 At best they might answer some information
19 responsive to interrogatory number 1. They won't identify
20 legal bureau attorneys who were present or who were
21 involved in arrest locations. They won't give us the
22 identities of incident commanders at the locations or the
23 officers who were the highest ranking patrol service bureau
24 members. The charts and other information that in other
25 words are much, much more limited in use than defendants

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2 are representing.

3 So what we've asked for is that the Court order -
4 and I should say also beyond that, looking at, for example,
5 interrogatory 11, interrogatory 11 seeks the identities of
6 personnel at the Mayor's office or the Mayor's Office of
7 Criminal Justice who were present at any of the protest
8 locations. Their response in this letter, very different
9 from their response in subsequent responses, we're reach
10 out to the Mayor's office for this information. Well, you
11 know, of course, our position is that's what they should've
12 done in March and in the several times since then where
13 they've redone and redone these responses, and we don't
14 even have sort of the basic algorithm information of who
15 did they reach out to in the Mayor's office, when are we
16 going to get the information, etc.

17 Interrogatories 12 and 13 seek --

18 THE COURT: Can we maybe, can we --

19 MR. OLIVER: I'm sorry, Your Honor.

20 THE COURT: Mr. Oliver, I think we need to break
21 this down into pieces. So let's start with 1 to 6. It
22 seemed like you had two problems. One, you don't have the
23 things that they say has the information, and, number two,
24 you know that certain of the information is going to be in
25 there. Is that fair?

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2 MR. OLIVER: Correct. Yes, Your Honor.

3 THE COURT: Okay, so let's hear from the City
4 about what we're going to do about this.

5 MS. WEISS: Well, plaintiffs do have some of
6 these documents. They have been produced in initial
7 disclosures, and some documents will be produced unredacted
8 at a later time. They do have a number of incident
9 commanders, so much so that they, you know, have been
10 serving deposition notices so that they can depose these
11 incident commanders and many, many other people who were
12 present.

13 But that being said, these documents are going to
14 contain most if not all of these information according to
15 conversations that I've had with my clients, and they're
16 going to be part of, we're hoping that - and like I said I
17 don't have it in front of me - this first batch of
18 discovery, and they'll get the names of nearly every member
19 of service who was present at these demonstrations. Some
20 of them will not be on detail rosters because oftentimes at
21 these demonstrations a police officer, more police officers
22 are needed, so there might be radio calls for whoever's in
23 the area to come, and there might not actually be a
24 document that shows that that officer arrived at the scene.
25 But these documents that we are going to be producing

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2 hopefully next week are going to contain nearly every
3 member of service who were at these demonstrations.

4 THE COURT: Okay, well, let's make clear I'm
5 ordering their production on the 30th, okay, so hopefully
6 is not in the cards. Production is ordered of these
7 documents on June 30.

8 Now, I don't know what to do about Mr. Oliver's
9 contention that, in fact, it's not going to have the
10 answers to these questions. What was the specific example
11 you gave, Mr. Oliver?

12 MR. OLIVER: Sure, Your Honor, I mean if we
13 could go through them, I would be happy to do that, but the
14 specific example I gave was the mass arrest report, for
15 example. I mean Ms. Weiss just gave another example which
16 is that these detail rosters, you know, are sort of filled
17 out kind of at the beginning of a shift, right, and then
18 people get deployed to different locations, and in order to
19 figure out who actually ended up where, you need much more
20 records. You need the radio communications about who was
21 deployed where and all kinds of other documents. I mean,
22 unfortunately, we do this in every case, and it's an uphill
23 battle to sort of show the Court, you know, defense counsel
24 says it's easy, we're getting you the stuff, this will give
25 you the answers.

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2 You know, I mean I'm not sure what the best way
3 to proceed is, Your Honor, but I'm confident because we've
4 gone down this road so many times before, that the records
5 that they - there are two types of records they've
6 identified, mass arrest reports and detail rosters, will
7 only give some information in response to interrogatories 1
8 and 6. And the commanders' sort of spreadsheet that
9 they've shown us has a bunch of like last names of some
10 officers for some locations. It's not an interrogatory
11 response that reflects that someone did their homework,
12 reviewed records, you know, found out what the answers to
13 these questions were as if they needed to, and then
14 produced something that, you know, someone signed and we
15 can use as evidence.

16 And I realize that it's a big case, so, you know,
17 we're not going to be able to get all of that sort at once
18 necessarily, but we would like a mechanism to show Your
19 Honor very quickly what's deficient and what we do end up
20 getting so that we can skip as many of the, I mean usually
21 what happens is we then have to take a bunch of depositions
22 where we don't have the records and the officers make a
23 record about how to get them and then come back to the
24 court and, you know, we'd like to skip as much of that as
25 possible with respect to these documents.

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2 So just to clarify Your Honor's order, were you
3 ordering them to produce the documents they say will answer
4 interrogatories 1 through 9 completely by the 30th?

5 THE COURT: Well, yes --

6 MR. OLIVER: Or just 1 through 6?

7 THE COURT: It was 1 through 6 I think is what I
8 was focusing on. I didn't - is there a distinction? I'm
9 not sure what documents are being produced with respect to
10 7 through 9?

11 MR. OLIVER: Me either, Your Honor. It just
12 says this information - the letter just says, "This
13 information will be contained in the documents which are to
14 be provided in response to the document request" --

15 THE COURT: Oh, okay, well, 7 is the CCRB
16 request. 7 and 8. 7, 8, and 9 are all CCRB documents. So
17 I think that's has to stay on the CCRB track. We're going
18 to hear from the CCRB on Monday. So I think we --

19 MR. OLIVER: Understood, Your Honor.

20 THE COURT: -- have to wait on that.

21 MR. OLIVER: I'm sorry, I think those would also
22 sweep in NYPD investigations and OIG, you know, any other
23 investigations. The CCRB is one bucket, but there were a
24 bunch of City agencies who were involved in the
25 (indiscernible).

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2 THE COURT: You're right. I mean I don't think
3 we can really divorce this interrogatory from the document
4 production. I think they have to rise and fall together, 7
5 through 9.

6 MR. OLIVER: Understood, Your Honor, and so is
7 the Court, would the Court order defendants to produce all
8 documents that are responsive, that provide all the, you
9 know, full and complete responses to 7 through 9 by the
10 30th?

11 THE COURT: Well, no, because the problem, I
12 mean I --

13 (interposing)

14 MR. OLIVER: -- I'm sorry.

15 THE COURT: -- but it's tied to the document
16 production, and that would have the tail wagging the dog as
17 it were. Unless there's some way to extract names that I
18 don't know about, you know, before you review documents,
19 but until you tell me that that's possible, I've already
20 made rulings with respect to the documents and how we're
21 going to proceed on that. So I think that has to await
22 that.

23 MR. OLIVER: Understood, Your Honor, thank you.
24 And just before we move on, on our request for relief on 2
25 to 4, interrogatories, I'm sorry, 2 to 5 was to ask for the

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2 Court to order responses to those interrogatories. 2 seeks
3 the identities of the incident commanders at each protest
4 location. Incident commander is a role in the police
5 department. It's the highest ranking uniformed member of
6 service at the protest location. And so it is the kind of
7 - it's not the kind of thing that the chart that they've
8 provided answers so that we could glean by looking at the
9 chart. We need to know who the bosses were who were making
10 the calls at those protest locations, and so those are
11 really interrogatories 2 and 3.

12 And similar issues with interrogatory 4 which --

13 THE COURT: Stop, stop, one at a time, one at a
14 time.

15 MR. OLIVER: Sure, sorry, Your Honor.

16 THE COURT: Ms. Weiss, is it truly your
17 contention, contrary to what Mr. Oliver is saying, that
18 these rosters and mass arrest spreadsheets are going to
19 show the incident commanders?

20 MS. WEISS: We (indiscernible) a chart with
21 incident commanders. I'm not really sure what Mr. Oliver
22 is saying. Not every incident will have an incident
23 commander. It is not true that the highest ranking member
24 of the NYPD on the scene is necessarily the incident
25 commander. An incident commander is assigned in those

1 demonstrations or those events where there's an incident
2 commander. Just because someone is the highest ranking
3 member of the NYPD on the scene doesn't make them an
4 incident commander, and just because there is an event
5 doesn't mean that there's an incident commander assigned.
6 So for the demonstrations where there were incident
7 commanders assigned, that is the information we've provided
8 in a document.

10 THE COURT: All right, Mr. Oliver, I think we're
11 hitting a problem, and the problem is this, you know, I can
12 talk about process issues and deadline and things like
13 that. But in terms of answer, you know, figuring out an
14 answer to a question like this, like whether these
15 documents are going to show this or not, I can't do that,
16 and I have to have more discussion with the parties. You
17 need to give me proof in a way that doesn't happen on a
18 phone call if you really want to pursue this.

19 I think we have to not do the substantive
20 objections to the interrogatory and, frankly, document
21 request responses. I think we have to deal more about
22 production and that process and moving things along than
23 getting into sort of merits based arguments about what's
24 going to happen. I mean they have to operate in good
25 faith. If they say that these interrogatories are going to

1 be answered by these document requests, I'm going to take
2 as a presumption, and then it'll be to you to say, you
3 know, we absolutely have to go a different route here. But
4 I don't want to do this in a phone call. I want to do this
5
6 --

7 MR. OLIVER: Understood, Your Honor.

8 THE COURT: -- through your explaining to the
9 other side what you think the problem is. Maybe they'll
10 come up with an accommodation, and then if there's truly an
11 impasse, then you're coming back to me. Okay?

12 MR. OLIVER: Understood, Your Honor, we'll
13 exhaust all those options and queue it up. Would it help
14 to go through the remaining interrogatories because --

15 THE COURT: Yeah --

16 MR. OLIVER: -- it's different issues.

17 THE COURT: Yeah, I mean I guess I imagined this
18 conference being more about document production because I
19 thought the interrogatory problems were substantive rather
20 than timing, except for 11. Perhaps we can talk about that
21 one. But if it's a timing problem, then I'm happy to talk
22 about it. So I'll give you the floor.

23 MR. OLIVER: Sorry, Your Honor, we can set 14 to
24 the side then, but if we could talk briefly about 10, 11,
25 and 12 to 13. 10 and 11 are interrogatories that relate to

1 identifying - (indiscernible) my interrogatory list - the
2 Mayor's office, City employees, and representatives of the
3 Mayor's office who communicated with the police department
4 about the police department's protest responses and
5 personnel at the Mayor's office and MOCJ, the Office of
6 Criminal Justice who were present at any of the protest
7 locations.

8 For number 10, the defendants, you know, in their
9 letter said we'll talk about this during any ESI meet and
10 confer. We had that yesterday, it was not a topic of
11 discussion. And for number 11, you know, we don't have any
12 information about what's been done or what will be done to
13 get us the answers that we need. So without this
14 information we have virtually nothing to target further
15 discovery from the Mayor's office and from the City at this
16 time.

17 THE COURT: Okay, I mean I think --

18 MR. OLIVER: It's a timing problem for us.
19 Sorry, Your Honor.

20 THE COURT: I understand that, but I think the
21 answers to 10 and 11 are very different. 10, the City is
22 saying the ESI production is going to answer this question,
23 and we can't answer it independently. Now, whether that's
24 a good answer or not, I don't know, but is that right, Ms.

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2 Weiss, is that your answer?

3 MS. WEISS: Yeah, it had to do with search terms
4 and searching for electronic communications. So yeah.

5 THE COURT: So their answer to number 10 is, if
6 you want to know who communicated with NYPD, we have to do
7 the ESI search. I mean if you have, you know, a reason for
8 me to - it doesn't seem like an unreasonable way to deal
9 with this issue which is examine the emails and figure out
10 who's been communicating.

11 MR. OLIVER: Understood, Your Honor, we don't -
12 understood, Your Honor. And what about --

13 THE COURT: Okay, 11 is on a different front
14 which is who was actually at any of the protests. So
15 what's the mechanism, Ms. Weiss, for doing this and when's
16 the response going to come? See, this is the problem, and,
17 Ms. Weiss, in future letters I need to solve this. To just
18 say you've reached out, that's the first part of something
19 you need to explain. You need to explain what, whether
20 you've given, you know, a response date, whether they've
21 given one, and if not, I may have to give one. So tell me
22 where we are on this.

23 MS. WEISS: Your Honor, not me personally,
24 members of my office reached out to whoever it is in the
25 Mayor's office would be the one to provide this

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2 information, and I was advised that it was being searched
3 for. I don't have further information on that front, but I
4 will check into that and let plaintiffs know what further
5 information I get.

6 THE COURT: Well, I make it simpler for you.

7 I'm ordering that this interrogatory be answered by July 1,
8 which is a week from today. So provide the updated
9 response to interrogatory 11. Mr. Oliver, what's next?

10 MR. OLIVER: Just one last issue with respect to
11 the rogs, Your Honor. Interrogatories 12 and 13 seek for
12 each plaintiff and others, but for now if we focus just on
13 the plaintiffs, the identities of the officer who directly
14 observed them or determined there's probable cause to
15 arrest them. And we don't have any substantive response to
16 these questions at all, you know, about plaintiffs, others
17 at the arrest locations or otherwise. So even assuming
18 that there's something to, you know, I mean there's a
19 tension between defendants saying we understand there's
20 class claims and lots of issues in this case, so we know
21 plaintiffs need lots of discovery and we're going to give
22 them virtually all of it, and they're saying, you know,
23 this is overly, you know, actually digging into what
24 happened is overly burdensome.

25 But certainly we're doing defendants'

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2 depositions. We've noticed defendants' depositions to
3 start mid-June, and defendants have not produced anyone
4 yet, and we're in the process of trying to work out, you
5 know, getting these depositions rolling yesterday. And we
6 don't even have basic information about who was personally
7 involved in putting their hands on our plaintiffs, who
8 decided to give the arrest orders that are relevant to our
9 plaintiffs' cases. What we do have in some cases are like
10 a copy of a desk appearance ticket or a copy of a summons,
11 documents that are handed to people when they're released
12 from custody. They don't have the substance of the
13 allegations that the officer allegedly observed.

14 And when we depose these people in these kinds of
15 chases, very frequently what happens is they say I didn't
16 see this person before they were put under arrest. I was
17 assigned this person and four others to process their
18 arrests. And we then need to do all kinds of follow-up
19 discovery to either find people who have personal knowledge
20 or get to the point where we get an adverse inference from
21 the Court, which is what we ended up getting in the R&T
22 cases. Judge Francis granted us adverse inferences after
23 we went through this process of trying to pin down who had
24 personal knowledge about our clients' pre-arrest conduct
25 and what led up to their arrests.

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2 So the ask in our letter with respect to
3 interrogatories 12 and 13 was for the individual defendants
4 to provide substantive and verified responses to
5 interrogatories 12 and 13. And certainly we think we need
6 something like that in order to pursue our individual
7 plaintiffs' claims, setting aside for a minute the class
8 claims.

9 THE COURT: Ms. Weiss.

10 MS. WEISS: I understand what Mr. Oliver is
11 saying, but I don't know that there is any way that we
12 could answer these interrogatories such as identifying
13 every officer who observed every plaintiff. I mean we
14 could answer broadly and say that every officer who was
15 there, but I don't think that there is any way to be able
16 to tell plaintiffs who, you know, who saw their clients do
17 what. We can certainly start with the arresting officer.
18 We present, we've provided body worn camera footage. Some
19 of the plaintiffs' attorneys have pointed out or identified
20 or noted officers in that footage and asked us to identify
21 who those people were because either their clients had a
22 belief that they either saw or somehow involved in their
23 incident. But short of that, I'm not really sure of a
24 practical way that we could get this information.

25 THE COURT: How many arrests are you talking

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2 about or plaintiffs?

3 MR. OLIVER: In Sow, Your Honor, I think we have
4 nine plaintiffs. I mean all tolled we probably have 50
5 plaintiffs. I'm not - maybe someone will help me out in
6 the chat, but --

7 THE COURT: I wanted a ballpark. So I think
8 with numbers like that, I think the documents - I think, as
9 a matter of proportionality and burden under Rule 26(b),
10 the documents that show who, you know, I assume show who
11 the arresting officer was, show other people who were
12 present are an appropriate way rather than having lawyers
13 for the defendants, you know, investigate each of these,
14 you know, each of these 50 arrests. So --

15 MR. OLIVER: Your Honor, if we revisit that, if
16 it turns out, and when it turns out in the depositions and
17 in getting these documents, that they do not reveal that
18 information, because to be clear, in our experience that is
19 just not true and it's not what happens. The officers
20 whose names on the paperwork are the start of the
21 investigation into who was actually there and what actually
22 happened. And so getting those records is going to then
23 lead to our taking those low-level depositions and sort of
24 going through the usual process which is what takes months
25 and months to get discovery done.

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THE COURT: You're saying that --

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MS. WEISS: Your Honor, if I may, having -
4 sorry.

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THE COURT: Go ahead.

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MS. WEISS: Go ahead, Your Honor. No please.

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THE COURT: No, you go ahead.

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MS. WEISS: Having spoken to or learned the
9 stories of many of these named officers who in many cases
10 were the arresting officers of these particular plaintiffs,
11 I think Mr. Oliver may be surprised pleasantly, with the
12 information that they do have.

13

MR. OLIVER: I'm sorry, but I know that I won't
14 be because our clients have testified that, you know, that
15 they were arrested or injured by people and then handed
16 over to other people. So the officers have an interest in
17 saying, yeah, I saw XYZ because if they haven't, in fact,
18 seen those things and they've said that they have in their
19 paperwork, that should be at least (indiscernible) a
20 problem.

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But I guess if the Court is not inclined to give
22 us relief on these issues now, then I just ask that we have
23 an expedited mechanism of queuing this up to show the Court
24 that these documents, you know, I mean we don't even have
25 the individual like packets of these arrest processing

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2 documents for most if not all of the individual plaintiffs.
3 But even - we would like an expedited mechanism to be able
4 to bring these issues to the Court so that we can move the
5 ball forward.

6 THE COURT: Well, I'm certainly not going to
7 preclude you from coming back and saying, you know, the
8 documents don't have what we need. So the answer to your
9 question, absolutely. In terms of expedited, my individual
10 practices allow you to bring an issue to me any time you
11 want, and the other side has to respond within two days.
12 And then I'll get to it, depending upon my schedule,
13 usually pretty quickly. So I think that's pretty
14 expedited.

15 MR. OLIVER: Thank you, Your Honor.

16 THE COURT: Okay, are we don't on
17 interrogatories?

18 MR. OLIVER: Yes, Your Honor, thank you.

19 THE COURT: Okay, Ms. Bicklen, what else should
20 we do today?

21 MS. BICKLEN: I'm going back to my notes at the
22 beginning, Your Honor, to see if there was a third thing to
23 discuss. I believe we have the orders for the immediate
24 production, and --

25 (interposing)

2 THE COURT: -- June 30, we're going to have
3 production June 30 and then weekly after that beginning on
4 July 8. Ms. Weiss needs to update her June 21 letter on a
5 regular basis so that the parties know exactly what's going
6 on with all of this. She needs to act sections about how
7 many documents are queued up for review and how many people
8 are reviewing them and expected dates of production. So I
9 think your next updated letter should be, well, a week
10 after this one was written. Well, you know what, maybe it
11 should come the day after you do your production, maybe
12 that's more sensible. So you should update this letter
13 July 1, and then after that beginning - you should update
14 it a week from today and then after that beginning July 9
15 and then every Friday. If you want to do it the day of the
16 production, that's fine too, but by the Friday of the week
17 so that they know exactly what's going on with all of these
18 things.

19 MS. WEISS: Yes, Your Honor. Thank you, Your
20 Honor.

THE COURT: I'm sorry, so go ahead, Ms. Bicklen,
anything else for today?

23 MS. BICKLEN: I'm sorry, there was just one
24 additional issue to address with respect to their responses
25 to request 1 and 2 regarding training materials and policy

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2 documents. You know, they have repeatedly claimed and
3 claimed in their letter that they're producing patrol guide
4 sections, but there are, has to be far more directives and
5 other information related to this. In their letter for the
6 first time, they identify Finest messages, but we need them
7 to search actually for policies and directive documents
8 beyond the patrol guide, and that's what we would ask here
9 today.

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THE COURT: Ms. Weiss, what makes you believe
11 that the patrol guide is - or better yet, what is being
12 done, I mean this seems like the heart of the case or a lot
13 of the case. What is being done to find documents
14 responsive to 1 and 2?

15

MS. WEISS: Well, as Ms. Bicklen mentioned and
16 as I put in the responses and in the letter, the patrol
17 guide determines the policy. There are some Finest
18 messages which may update or remind the officers --

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THE COURT: What are Finest messages? I don't
20 know.

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MS. WEISS: They are messages that go out to all
22 police officers and are often read at rollcalls that are
23 usually sort of brief updates on things or brief reminders.
24 So there are likely going to be some Finest messages,
25 especially with respect to COVID protocols and the

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2 (indiscernible) last summer. There are training documents
3 because, of course, officers are trained on those things,
4 and we'll be providing them, and I believe that those
5 documents will be contained in the 50,000 document batch.
6 Possibly not the Finest messages, I'm not sure, but I can
7 doublecheck on that.

8 THE COURT: I think Ms. Bicklen's question had
9 to do with your methodology for searching. How is it you
10 know to look for, I mean maybe the answer is you talked to
11 someone who knows at the police department. But what is
12 the methodology for deciding where these documents relating
13 to tactics and procedures and policies and so forth are
14 going to exist?

15 MS. WEISS: We speak with individuals at the New
16 York City Police Department, both in their legal department
17 and in other units that would have knowledge of these
18 things, and these are what we are advised.

19 THE COURT: Ms. Bicklen, where do we go with
20 this?

21 MS. BICKLEN: Your Honor, we would prefer, we
22 would like - what we thought was going to happen in this
23 letter but is who they've actually talked to, what searches
24 have actually been done, and, you know, what documents
25 they're actually producing. This is the first time now

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2 that they state for Finest messages, there simply are other
3 materials out there, and with just this very generic notion
4 it's hard to even know that they've searched properly. And
5 the same is true for training as well. There are
6 PowerPoints, there are other materials that are out there,
7 and we have to know how they're going about searching for
8 this relevant information. And we would request that that
9 be added to the letter for June 30. Or July 1 I believe.

10

THE COURT: Ms. Weiss, I think we do need a
11 little more detail on this. So let's put that in the next
12 letter. Ms. Bicklen, anything else for today?

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MS. BICKLEN: I think that's it, Your Honor.

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THE COURT: Ms. Weiss, anything?

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MS. WEISS: No, Your Honor.

16

THE COURT: All right, so I'm, you know, I'm
17 very accessible if there's a problem. We're going to have
18 the weekly reports from Ms. Weiss to the law department,
19 I'm sorry, from Ms. Weiss to the plaintiffs, and we're
20 going to start having the production. If there's any
21 substantive disputes, use paragraph 2A of my individual
22 practices to try to resolve them. Frankly, if there's
23 disputes of any kind, you should use those, and you'll be
24 able to get my attention very quickly by writing me a
25 letter. All right, thank you everyone, and good bye.

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MS. WEISS: Thank you, Your Honor.

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MR. OLIVER: Thank you, Your Honor.

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(Whereupon the matter is adjourned.)

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I, Carole Ludwig, certify that the foregoing

transcript of proceedings in the United States District

Court, Southern District of New York, Payne, et al. versus

De Blasio, et al., docket #20cv8924, was prepared using PC-

based transcription software and is a true and accurate

record of the proceedings.

Signature

Carole Ludwig

Date: June 28, 2021